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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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# Office Action Summary

Application No.

10/810,302

Applicant(s)

NGUYEN ET AL.

Examiner

LUAT PHUNG

Art Unit

2464

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/22)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. Applicant's arguments filed on 2 November 2009 have been fully considered but they are moot in view of the new ground(s) of rejection.
2. Claims 1-24 are pending.
3. Claims 1, 9 and 20 have been amended.
4. Claims 1-24 are rejected.

***Continued Examination Under 37 CFR 1.114***

5. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on \_ has been entered.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-18 and 20-24 are rejected under U.S.C. 103(a) as being unpatentable over Goodman (US 7,173,910) in view of Baj (US 2002/0145979).

Regarding **claims 1 and 9**, Goodman discloses for use in a telecommunication network, an apparatus for testing a telecommunication device comprising switching fabric including a plurality of voice paths (col. 5, lines 34; test probe including call generator), said apparatus comprising:

a test controller (fig. 1, voice quality test probe 14a) configured to receive a test call initiation message directed to the test controller and to establish a call connection for the test call between the originating terminal and a destination terminal via a packet-switched network to test the allocated voice path; (col. 1, lines 22+; col. 3, lines 52+; col. 5, lines 34+; a phone number being used by an initiator test probe, i.e., test controller, to

initiate a test call to the other test probe by having the test call set up over the VoIP network via the VoIP gateway, which establishes the voice path as it is well known in the art, using VoIP protocols such as H.323, SIP and MGCP)

wherein the test controller comprises a simulator that coordinates verification of a voice and a signaling functionality of the telecommunication device (col. 5, lines 34; test probe including package to simulate generating calls, opening logical channels and transmitting RTP voice packets)

Goodman does not explicitly disclose:

a test controller configured to receive a test call initiation message *from an originating terminal, to prompt the telecommunication device to allocate one of the voice paths within the telecommunication device for a test call based on the test call initiation message*, and to establish a call connection *via the allocated voice path*.

However establishing a test call from a terminal, the test call involving setup of a voice path with a switch under test is well known in the art. In particular Baj from an analogous art discloses:

a test controller (gatekeeper per Fig. 2, element 14) configured to receive a test call initiation message directed to the test controller from an originating terminal (Fig. 3; para. 27, 31, 39; VoIP client, as originating terminal, sends a request, i.e., a test call initiation message, to the gatekeeper, which routes the incoming VoIP call to specified destination; the call is to establish transmission path for testing voice quality of VoIP network; Fig. 1; para. 26-29; VoIP call from client server 20 goes to gatekeeper which

provides call-control services and routes calls to one of gateways), to prompt the telecommunication device (gateway per Fig. 2, element 13b; gatekeeper route incoming call to one of gateways per para. 27; it is well known to one of ordinary skill in the art at the time of the invention that the gatekeeper interfaces with the gateway to establish communications paths via standards VoIP protocols such as H.323, MGCP and RTP) to allocate one of the voice paths within the telecommunication device for a test call based on the test call initiation message (para. 27, 33, 34, 39; establishing transmission path by gateway between VoIP client and destination phone; VoIP client executing call initiation scripts and sending a request to place a series of calls through gateway, i.e., plurality of voice paths within the gateway), and to establish a call connection for the test call between the originating terminal and a destination terminal via the allocated voice path and a packet-switched network to test the allocated voice path. (first establishing a transmission path between the VoIP client and destination phone, then testing the quality of voice transmissions per para. 31, 34)

Thus it would have been obvious to the person of ordinary skill in the art at the time of the invention to implement the call setup of Baj in the test probe of Goodman by implementing the voice path establishment as suggested by Baj in the simulator/generator test probe system of Goodman. The motivation for doing so would have been to test voice path over a VoIP network.

Regarding **claims 2 and 10**, Baj further discloses wherein the voice paths comprise time division multiplexed (TDM) switched circuits (PSTN per Fig. 2 and para. 26).

Regarding **claims 3 and 13**, Goodman further discloses wherein the originating terminal and the destination terminal are Session Initiation Protocol (SIP) phones (col. 5, lines 1-46; test probe supporting SIP instead of or in addition to H.323).

Regarding **claims 4 and 14**, Baj further discloses the test call initiation message being addressed to an Internet Protocol (IP) address of the test controller (gatekeeper connected to Internet, identified by IP address per Fig. 2; para. 27).

Regarding **claims 5 and 15**, Goodman further discloses Baj discloses wherein the test call origination message is an INVITE message (using SIP for generating test calls (col. 5, lines 1-46). It is well known to one of ordinary skill in the art at the time of the invention that an INVITE message is used to initiate a call.)

Regarding **claims 6 and 16**, Baj further discloses wherein the test controller is configured to send a signaling message to an IP address of the destination terminal (para. 27).

Regarding **claims 7 and 17**, Baj further discloses wherein the test controller is configured to send a signaling message to a device controller within the telecommunication device, the device controller allocating the allocated voice path (para. 27).

Regarding **claims 8 and 11**, Baj further discloses wherein the allocated voice path provides a connection to a media gateway for converting between circuit-switched voice and packet-switched voice (conversion of media formats by gateways per para. 27).

Regarding **claim 12**, Baj further discloses the telecommunications system as set forth in claim 9, wherein the telecommunication device comprises:

switching fabric including a plurality of voice circuits for switching voice calls (para. 27-36); and

a controller operable to receive a signaling message from the test controller to establish the call connection for the test call through the packet-switched network, the controller being further operable to allocate one of the voice circuits for the test call to test the allocated voice circuit (para. 27-36).

Regarding **claim 18**, Baj further discloses wherein the telecommunication device is a switch (gateway per para. 33).

**Claims 20, 21 and 22-24** are method claims corresponding to apparatus claims 1, 8 and 4-6, respectively, and are therefore rejected under the same reason set forth in the rejection of claims 1, 8 and 4-6, respectively.

10. Claim 19 is rejected under U.S.C. 103(a) as being unpatentable over Goodman in view of Baj, and further in view of Dorenbosch, et al (US Pub 2002/0114317).

Regarding **claim 19**, the combination of Baj and Goodman discloses all of the subject matter as previously recited in this office action except wherein the switch is a mobile switching center. Dorenbosch from the same or similar fields of endeavor discloses a system comprising an MSC (Fig. 3, element 302) communicating with a SIP peer/server (Fig. 3, element 206). Thus it would have been obvious to the person of



ordinary skill in the art at the time of the invention to combine the network of Baj and Goodman with the MSC of Dorenbosch by replacing the gateway with the MSC. The motivation for the combination would have been to support testing a voice path on a wireless system.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form 892).
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LUAT PHUNG whose telephone number is (571) 270-3126. The examiner can normally be reached on M-Th 7:30 AM - 5:00 PM, F 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Q. Ngo can be reached on 571-272-3139. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. P./

Examiner, Art Unit 2464

/Ricky Ngo/

Supervisory Patent Examiner, Art Unit 2464